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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 16 Cr. 389 (RJS)

6 JONA RECHNITZ,

7 Defendant.
8 -----x

9
10 Before:
11 HON. RICHARD J. SULLIVAN,
12 District Judge
13
14 APPEARANCES
15
16 PREET BHARARA
17 United States Attorney for the
17 Southern District of New York
18 BY: RUSSELL CAPONE
18 KAN M. NAWADAY
19 Assistant United States Attorneys
20
21 COOLEY, LLP
21 Attorneys for Defendant
22 BY: ALAN LEVINE
22 LAURA BIRGER
22 NICHOLAS A. FLATH
23
24 ALSO PRESENT:
25 EMILY ROSADO, Pretrial Services

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1 (Case called)

2 THE COURT: Let's take appearances. For the
3 government.

4 MR. CAPONE: Russell Capone and Kan Nawaday for the
5 government. With us at counsel table is Pretrial Services
6 Officer Emily Rosado. Good afternoon, your Honor.

7 THE COURT: Yes, all right, Mr. Capone, Mr. Nawaday,
8 and Ms. Rosado, good afternoon.

9 For the defendant.

10 MR. LEVINE: Alan Levine and Laura Birger from Cooley,
11 LLP, for the defendant, your Honor.

12 THE COURT: Mr. Levine, Ms. Birger.

13 MR. LEVINE: And with us at counsel table is Nick
14 Flath, an associate at our firm.

15 THE COURT: Good afternoon to all of you.

16 The defendant is Mr. Rechnitz. Am I pronouncing that
17 right?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Rechnitz, good afternoon to you.

20 As I understand it, we are here for a plea to an
21 information. I received, I guess it was Friday, maybe it was
22 Thursday, I forgot which, but late last week I received an
23 application from the government to seal this courtroom and to
24 seal these proceedings and to seal the docket sheet with
25 respect to this plea today and supporting documents that were

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1 filed in connection with it, so I have issued that order. I
2 don't think I need to do anything more. The courtroom is
3 sealed. I will note that for the record. The only people here
4 are the people who been identified on the record, my law clerks
5 and interns who are sworn to secrecy and lots of burly men who
6 look like they must be with a law enforcement agency of some
7 kind.

8 Is that right?

9 MR. CAPONE: Yes, your Honor.

10 THE COURT: The door is locked, and we leaned the
11 chair against it as well to make sure nobody can get in.

12 Mr. Capone, tell me, then, the plan today is to
13 proceed with a guilty plea on the charges contained in the
14 superseding information, is that correct?

15 MR. CAPONE: Yes, your Honor, as well as a waiver of
16 indictment.

17 THE COURT: All right.

18 Mr. Rechnitz, before I accept your guilty plea today,
19 I am going to ask you some questions. The purpose of my
20 questions is -- there are really two purposes. The first
21 purpose is to make sure that you are pleading guilty because
22 you are guilty and not for some other reason. The second
23 purpose is to make sure that you fully understand your rights,
24 the rights that you have as a defendant in a criminal case here
25 in the United States Courts. So as I ask you these questions,

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1 if you don't understand the question, tell me. I will rephrase
2 it or I will try to make it more clear. You shouldn't answer a
3 question if you don't fully understand it.

4 If at any point you want to confer with your
5 attorneys, that's fine. I will give you as much time as you
6 need. I don't want you to feel rushed in any way, all right?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: In a moment, I am going to have you take
9 an oath. I am going to have you stand and swear that you will
10 truthfully answer the questions that I have put to you. Once
11 you have taken that oath, obviously anything you say that is
12 false here in court, well, that would be a crime. That would
13 be the crime of perjury or perhaps obstruction of justice, but
14 it could and would likely be a crime. I tell you that not to
15 scare you, but just so you understand it is vitally important
16 that you be completely truthful in all your answers here today.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you have any questions so far?

20 THE DEFENDANT: I do not.

21 THE COURT: All right. So let me ask you now to stand
22 and raise your right hand.

23 Do you solemnly swear that the answers you will give
24 to the questions that I put to you here today in court will be
25 the truth, the whole truth, and nothing but the truth, so help

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1 you God?

2 THE DEFENDANT: Yes.

3 THE COURT: Please have a seat.

4 Mr. Rechnitz, could you tell me your full name.

5 THE DEFENDANT: Jona Solomon Rechnitz.

6 THE COURT: How old are you?

7 THE DEFENDANT: 33.

8 THE COURT: How far did you go in school?

9 THE DEFENDANT: I have a bachelor's of science in
10 business management.

11 THE COURT: Are you now or have you recently been
12 under the care of a doctor or a psychiatrist?

13 THE DEFENDANT: No.

14 THE COURT: Have you ever been treated or hospitalized
15 for any kind of mental illness?

16 THE DEFENDANT: No.

17 THE COURT: Have you ever been treated or hospitalized
18 for any kind of addiction, including drug or alcohol addiction?

19 THE DEFENDANT: No.

20 THE COURT: In the past two days, have you drunk any
21 alcohol, taken any pills, or medicines, or drugs of any kind?

22 THE DEFENDANT: Yes.

23 THE COURT: Tell me about that.

24 THE DEFENDANT: I have a daily dose of Xanax and of
25 Lexapro.

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1 THE COURT: That has been prescribed by a doctor?

2 THE DEFENDANT: Yes.

3 THE COURT: So you are seeing a doctor for at least
4 something related to your nerves, is that what it is?

5 THE DEFENDANT: Yes.

6 THE COURT: Xanax and Lexapro.

7 THE DEFENDANT: Correct.

8 THE COURT: How long have you been seeing a doctor?

9 THE DEFENDANT: About a little bit over a month.

10 THE COURT: A month, okay. I don't want to pry into
11 your medical communications with your doctor, but is there
12 anything about this medication that affects your judgment or
13 your ability to think clearly?

14 THE DEFENDANT: No.

15 THE COURT: Does it affect your memory in any way?

16 THE DEFENDANT: No.

17 THE COURT: Is there any other medication that you are
18 taking --

19 THE DEFENDANT: No.

20 THE COURT: -- besides those two?

21 Anything else that affects your judgment or your
22 ability to think clearly?

23 THE DEFENDANT: No.

24 THE COURT: Mr. Levine, do you have any doubt as to
25 Mr. Rechnitz's mental competence or his ability to enter an

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1 informed plea?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Mr. Capone, do you have any such doubts?

4 MR. CAPONE: No, your Honor.

5 THE COURT: Neither do I. I haven't seen Mr. Rechnitz
6 for more than five minutes, but he certainly seems to be
7 following all of my questions, answering appropriately. Based
8 on his answers to my questions so far and based on the
9 representations of counsel, I find that Mr. Rechnitz is fully
10 competent to enter an informed plea.

11 Mr. Rechnitz, as I understand it, you wish to plead
12 guilty today, is that correct?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you feel you have had enough time to
15 discuss this case, the charges against you, and any possible
16 defenses you may have to those charges with your attorneys?

17 THE DEFENDANT: Yes.

18 THE COURT: Do you think you have had enough time to
19 chat with them about these charges and the possible defenses
20 you may have?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you satisfied with your attorneys'
23 representation of you so far?

24 THE DEFENDANT: Yes.

25 THE COURT: What I want to do, first of all, is talk

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1 about the charges against you. So you should have in front of
2 you an information. Do you see that?

3 MR. CAPONE: Your Honor, we handed up all of our
4 copies, with apologies.

5 THE COURT: Well, take them back.

6 MR. CAPONE: And the waiver as well.

7 THE COURT: Let's hand those back.

8 MR. CAPONE: Thank you, your Honor.

9 Mr. Rechnitz, I am going to have handed back to you a
10 copy of the information that sets forth the charges and another
11 document that I will ask about in a moment.

12 Looking at the information, have you seen that
13 document before, before today?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you read it?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Have you discussed it with your attorneys?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you have any questions about it?

20 THE DEFENDANT: I do not.

21 THE COURT: Would you like me to read it out loud here
22 in court?

23 THE DEFENDANT: No, thank you.

24 THE COURT: You think you understand it?

25 THE DEFENDANT: Yes.

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1 THE COURT: You should have another document in front
2 of you that's called a waiver of indictment form. Do you see
3 that?

4 THE DEFENDANT: Yes.

5 THE COURT: That has a couple of lines for signatures.
6 Is one of those signatures yours?

7 THE DEFENDANT: Yes.

8 THE COURT: Before you signed that document, you read
9 it?

10 THE DEFENDANT: Yes.

11 THE COURT: And you discussed it with your attorneys?

12 THE DEFENDANT: Yes.

13 THE COURT: And you were able to ask them and they
14 were able to answer any questions that you may have had about
15 that document?

16 THE DEFENDANT: Yes.

17 THE COURT: Mr. Levine, is that your signature on the
18 advice of rights form or Ms. Birger's?

19 MR. LEVINE: Actually, it is Ms. Birger's, and I think
20 she will answer the questions from here on out, your Honor.
21 That's all she gave me permission to do today.

22 THE COURT: That's fine. I have worked with her
23 before, so I know that you are telling the truth.

24 MR. LEVINE: I understand.

25 THE COURT: Ms. Birger, that's your signature?

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1 MS. BIRGER: It is, your Honor.

2 THE COURT: Before you signed it, you reviewed the
3 document and discussed what it all means with your client?

4 MS. BIRGER: I did, your Honor.

5 THE COURT: Maybe I will have you get a little
6 exercise and just hand that all back to my law clerk, because
7 this stuff will be docketed under seal, but nonetheless
8 docketed.

9 Mr. Rechnitz, I am going to ask you some questions
10 that I am pretty confident your lawyers have gone over with
11 you, but I don't want to leave them to chance. Okay?

12 THE DEFENDANT: Okay.

13 THE COURT: I'm sure they described to you the
14 difference between an information and an indictment. Do you
15 think you understand the difference?

16 THE DEFENDANT: Yes.

17 THE COURT: The way it works basically is that
18 normally before you can be charged with a crime in federal
19 court, the government would have to present its evidence to a
20 grand jury. A grand jury consists of 23 citizens whose job it
21 is to consider the evidence presented by the government and
22 then to determine whether there is probable cause to believe
23 that a crime or crimes were committed and that you committed
24 one or more crimes. That would be the task of the grand jury.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: As I said, the standard would be probable
3 cause -- so it is not beyond a reasonable doubt, which would be
4 the standard at trial -- just probable cause, is it more
5 probable than not that a crime was committed and that you
6 committed the crime. That's what they would be asked to
7 determine. They wouldn't have to be unanimous. At trial they
8 would have to be unanimous. But at the grand jury stage, they
9 just have to have a majority of the 23 would have to find that
10 that standard had been met.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: But they would also have to have a quorum
14 present. They would have to have at least 16 members of the
15 grand jury present before they could even have a vote. If they
16 only had 15, even if they were all unanimous, that wouldn't be
17 enough. They couldn't do anything.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: The purpose of doing it this way, I
21 think -- it's in the Constitution, so I wasn't there, but I
22 think the purpose is to protect individuals, to basically
23 create a buffer between the government and individual
24 defendants. This buffer, this institution, that we call the
25 grand jury was designed to carry that purpose. There might

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1 have been some other reasons, too, but I think that is the
2 principal reason.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: You have, by signing that waiver of
6 indictment, agreed to proceed by what's known as an
7 information. An information looks an awful lot like an
8 indictment. In fact, it is almost indistinguishable. The only
9 real difference is that the indictment says, "The grand jury
10 charges" and is returned by the grand jury. The information
11 says "The United States Attorney charges," and it's not been
12 presented to the grand jury.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: But you have the right to go by way of the
16 grand jury.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Are you willing to give up that right?

20 THE DEFENDANT: Yes.

21 THE COURT: You understand that by proceeding this
22 way, it means that there won't be that buffer? It will just be
23 the government bringing charges against you.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: Do you have any questions about any of
2 these rights or any of the things I just said about the grand
3 jury?

4 THE DEFENDANT: I do not.

5 THE COURT: And you are comfortable waiving that right
6 to a grand jury, correct?

7 THE DEFENDANT: Yes.

8 THE COURT: I now want to tell you about some other
9 important rights that you have. Again, if at any point you
10 don't understand what I am talking about or you have some
11 questions of your own, jump right in. This is not designed to
12 be a one-way conversation with you just saying yes. So if you
13 have any questions, let me know.

14 THE DEFENDANT: Okay.

15 THE COURT: What I am going to do now is talk about
16 some other rights that you have as a defendant in a criminal
17 case. I am going to address these in two ways. First I am
18 going to ask you about a document which I hope you have there,
19 an advice of rights form. Do you guys have that?

20 THE DEFENDANT: Yes.

21 THE COURT: All right. Great. Good.

22 That sort of lays out in black and white the rights
23 that you have as a defendant. I think it is always a good
24 practice to make sure that defendants read those and review
25 them with their attorney before entering a guilty plea. I have

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1 a lot of confidence, frankly, in your lawyers, and I am sure
2 they went over this with you even without the benefit of my
3 little form, but I think it is always a good practice, so I do
4 it this way.

5 After I have asked you some questions about that form,
6 I am then going to ask you questions here in court that cover a
7 lot of the same ground. I do it this way not because I like to
8 be repetitive, it is just that these rights are so important
9 and your understanding of them is so crucial that I don't want
10 to leave anything to chance, and I want to give you an
11 opportunity -- sometimes reading something and hearing
12 something are different things; and if at any point upon me
13 saying, "Do you understand that you have this right?" that it
14 prompts you to have a question, I want to make sure that we
15 have a chance to talk about it, okay?

16 THE DEFENDANT: Okay.

17 THE COURT: So let's talk about the document in front
18 of you. Again, it is, I think, a two-page document. On the
19 second page it has a signature line, is that right?

20 THE DEFENDANT: Yes.

21 THE COURT: Is that your signature there on one of the
22 lines?

23 THE DEFENDANT: Yes, it is.

24 THE COURT: Before you signed that document, you read
25 it?

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1 THE DEFENDANT: Yes.

2 THE COURT: And you discussed it with your attorneys?

3 THE DEFENDANT: Yes.

4 THE COURT: And you asked them any questions you may
5 have had about those rights and what it means --

6 THE DEFENDANT: Yes.

7 THE COURT: -- to waive those rights, is that correct?

8 THE DEFENDANT: Yes.

9 THE COURT: Ms. Birger, is that your signature on the
10 advice of rights form as well?

11 MS. BIRGER: Yes. Both Mr. Levine and I signed it.

12 THE COURT: Well, I will ask you the questions.

13 Either one of you will do.

14 Before you signed it, you reviewed the rights with
15 your attorneys, Mr. Rechnitz?

16 THE DEFENDANT: I did, your Honor.

17 THE COURT: And you were able to answer any questions
18 he may have had about those rights?

19 MS. BIRGER: Yes.

20 THE COURT: Another opportunity for exercise. I will
21 have you hand that up. I will mark that as a court exhibit. I
22 will mark that as Court Exhibit A. I hang on to these. I
23 don't typically docket them. But if there ever is any
24 question, it will have my initials on it, it will have today's
25 date, and it will have in my handwriting, "Court Exhibit A."

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1 I guess the first right I wanted to go over with you,
2 Mr. Rechnitz, is your right to a speedy and public trial by a
3 jury on the charges contained in this information.

4 Do you understand that you have that right?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: So you would be entitled to have a jury
7 determine whether you were guilty or not guilty of the charge
8 contained in the information.

9 Do you understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: Unlike the grand jury, the trial jury will
12 be determining whether the government had proved its case
13 beyond a reasonable doubt.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: That's a much higher standard than
17 probable cause. "Beyond a reasonable doubt," that's a pretty
18 tall order, and at trial it is not only that the jury would
19 have to find that you were guilty beyond a reasonable doubt,
20 they would also have to be unanimous about that.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: So a grand jury, a simple majority would
24 do; but the jury at trial would have to be a unanimous jury,
25 finding that the government had proven its case beyond a

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1 reasonable doubt.

2 Do you understand that?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: You wouldn't have to prove that you were
5 innocent if you went to trial.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: In fact, you wouldn't have to prove
9 anything if you went to trial. You could sit quietly and do
10 nothing. You could quietly read the newspaper if you wanted --
11 I wouldn't advise it, but you could -- and the burden would
12 always be on the government to prove its case beyond a
13 reasonable doubt.

14 Do you understand that?

15 THE DEFENDANT: I do.

16 THE COURT: At trial and at every stage of your case,
17 you would be entitled to be represented by an attorney. If you
18 couldn't afford an attorney, then one would be appointed for
19 you at no cost to you.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: In this case, Mr. Levine and Ms. Birger
23 and Mr. Flath, they are retained lawyers, is that correct?

24 THE DEFENDANT: Yes.

25 THE COURT: They are with a law firm, so you are

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1 paying for them to represent you, is that correct?

2 THE DEFENDANT: Right.

3 THE COURT: There is nothing wrong with that. That's
4 the way it usually works. However, I just want to point out
5 that if you were broke, if you just were flat broke and you no
6 longer had any ability to pay these attorneys, it doesn't mean
7 that you would then have to soldier on alone. It means you
8 could simply ask me to appoint a lawyer to represent you at no
9 cost to you and you would probably have to fill out an
10 affidavit that indicates what your financial circumstances are.
11 But if I found that you couldn't afford an attorney, then I
12 would appoint from a list of attorneys approved by the court.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: If there were a trial, then the witnesses
16 for the government would have to come into this courtroom and
17 they would have to testify here in your presence.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: They would sit right here in this witness
21 box so that you could see them and so that you could hear them,
22 and that's because you have a right to confront your accusers.
23 It also means that your attorneys would have the opportunity to
24 cross-examine those witnesses, to ask them questions, to test
25 whether they are telling the truth, to see if they know what

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1 they are talking about, to see if they are lying or confused.
2 They would have that opportunity.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: At trial, you would have the right to
6 challenge the government's evidence if you wanted to. If you
7 thought there was a basis to keep it out, you could do that.
8 You would also have the right to call your own witnesses and
9 introduce your own evidence if you wanted to.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: As I said before, you won't have to, but
13 you would have the right to. And if there were witnesses that
14 you wanted to call and they said to you, not a chance, I'm not
15 coming to court, it's the last place I want to be, good luck to
16 you, well, that wouldn't be the end of the story because you
17 could have subpoenas issued or other process used to compel
18 those people to come to court and to testify truthfully under
19 oath.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: You yourself could testify at trial if you
23 wanted to.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: You wouldn't have to. You would have a
2 right not to. But if you wanted to, you could testify.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: If you chose not to testify, however, you
6 should understand that the jury could attach no significance to
7 that fact. They couldn't say, This guy Rechnitz, he must be
8 guilty, because an innocent guy would have gotten on the stand
9 and told his side of the story. They are not allowed to draw
10 that inference. In fact, I would remind them at trial,
11 probably multiple times, as I always do, I would remind the
12 jury that the defendant is presumed innocent; that it is the
13 government's burden to prove the defendant's guilt beyond a
14 reasonable doubt; and that the defendant has no obligation to
15 present any evidence or to testify; and that if the defendant
16 chose not to testify, if you chose not to testify, I would tell
17 the jury, You can't attach any significance to it. You can't
18 infer that he is guilty. In fact, to the contrary. You have
19 to presume that he is innocent.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If the jury returned a guilty verdict
23 against you, you then would have the right to appeal the jury's
24 verdict.

25 Do you understand that?

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1 THE DEFENDANT: Yes.

2 THE COURT: In fact, you would first have the right to
3 ask me to overturn the verdict. You could ask me to find that
4 there wasn't sufficient evidence. If I declined, if I said,
5 no, I think the jury reached a reasonable conclusion, that it
6 was a fair inference for them to draw from all of the evidence,
7 you would still have the right to appeal above me. There is a
8 Court of Appeals that sits literally above me and they sit
9 above me figuratively, too. Their job is to make sure I didn't
10 make any mistakes and make sure the jury didn't make any
11 mistakes, and so you would have the right to appeal the verdict
12 to the Court of Appeals.

13 Do you understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: Even now, Mr. Rechnitz, as you are getting
16 ready to enter a guilty plea, you have a right to change your
17 mind.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: We have not yet reached the point of no
21 return. We are pretty close, but we are not there yet. If you
22 told me right now, I change my mind, I would like to go to
23 trial I would like to avail myself to all these rights you
24 described, that would be okay. I wouldn't be mad at you. The
25 government wouldn't be mad at you. Your attorneys wouldn't be

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1 mad at you. We all understand this is your call, and whatever
2 you decide we would we respect that.

3 Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Do you nevertheless want to go forward
6 with the guilty plea at this time?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand if you plead guilty and
9 I accept your guilty plea, that there will be no trial in this
10 case.

11 THE DEFENDANT: I understand.

12 THE COURT: In fact, you will have given up your right
13 to a trial and all of the other rights that I have just
14 mentioned.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: I guess with two exceptions: Your right
18 to counsel, that will continue. You won't give up that right.
19 Pleading guilty won't affect your right to counsel. And I
20 guess you will still at least potentially have the right to
21 appeal, but you almost certainly wouldn't be able to appeal
22 whether or not you committed this crime once you pled guilty to
23 it. You might be able to appeal some other things, but it is a
24 pretty tall order to come into court, to have pled guilty and
25 to acknowledge your guilt under oath and then say, I was just

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1 kidding around, I didn't mean it, and appeal on that basis.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: I should also tell you that, as a result
5 of your guilty plea today, I will sentence you or at least a
6 judge will sentence you. It might be me, it might be another
7 judge, depending on how things work out, but ultimately you
8 will be sentenced on the basis of the crime that you pled
9 guilty to.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: Not today. It won't be for some months,
13 perhaps, but ultimately there is a connection between what you
14 plead to today and your sentencing.

15 Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Finally, I guess the last thing I want to
18 make sure you understand is that before I will accept your
19 guilty plea today, I am going to ask you to tell me in your own
20 words what it is you did that makes you guilty of this crime.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: That's kind of a big deal, because, as I
24 said before, nobody can make you testify. Nobody can make you
25 really speak against your will. But before I accept your

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1 guilty plea, I want to be confident that you are pleading
2 guilty because you are guilty and not for some other reason.
3 So that's why I am going to ask you to tell me what it is that
4 you did that makes you guilty before I accept your guilty plea.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Do you have any questions about any of
8 these rights that we have been discussing?

9 THE DEFENDANT: I don't.

10 THE COURT: And you are willing to give up your right
11 to a trial and all of the other rights that I have just
12 mentioned?

13 THE DEFENDANT: Yes.

14 THE COURT: All right. So let's talk a little bit
15 about the charges. I am not going to read the information.
16 You said you didn't need that. But you are charged in one
17 count, conspiracy to commit wire fraud. It's one count, right?

18 MR. LEVINE: Yes.

19 THE COURT: Conspiracy to commit wire fraud in
20 violation of a statute that's Title 18 of the United States
21 Code, Section 1349. It references a couple of other statutes,
22 1343 and 1346, but it is basically a wire fraud conspiracy that
23 you have been charged with.

24 Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: I am going to ask the government, I will
2 ask Mr. Capone, to summarize what are called the elements of
3 this crime. The elements, it is kind of the building blocks,
4 the requirements of the crime. Put it this way. If any one of
5 these elements were missing or if any one of these elements
6 were not proven beyond a reasonable doubt, then the jury
7 wouldn't be able to convict you of this crime. You couldn't be
8 found guilty. If any of these elements I find have not been
9 established to my satisfaction, then I won't accept the guilty
10 plea. So they are called the elements. They can sound a
11 little technical. But, frankly, they are designed so that
12 juries can understand them and so that individual citizens can
13 understand them, so hopefully they are not so complicated. So
14 listen to Mr. Capone as he recites these elements. If, after
15 he is finished, you have any questions about what he just said,
16 let me know, and we can discuss it a little further, okay?

17 THE DEFENDANT: Sure.

18 THE COURT: Mr. Capone, do you want to go over just
19 briefly the elements for Count One of the information?

20 MR. CAPONE: Yes, your Honor.

21 To prove the honest services wire fraud conspiracy
22 charged, at trial, the government would have to prove:

23 First, the existence of a conspiracy, that is, an
24 agreement or understanding to commit wire fraud by executing a
25 scheme and artifice to defraud, to deprive, in this case, as

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1 charged in the information, first, the public of its intangible
2 right to the honest services of law enforcement and other
3 public officials and, two, to deprive the members of the
4 Correction Officers' Benevolent Association of their intangible
5 right to the honest services of a senior COBA official.

6 Second, the government would have to prove that the
7 defendant intentionally and knowingly became a member of the
8 conspiracy.

9 As to the underlying charge that the defendant will be
10 charged with conspiring to commit, the government would have to
11 prove:

12 First, that there was a scheme or artifice to defraud,
13 again, the public of its intangible right to the honest
14 services of law enforcement and other public officials and,
15 too, to the members of COBA of the intangible right to the
16 honest services of a senior COBA official;

17 Second, that the defendant willfully and knowingly
18 participated in the scheme or artifice to defraud; and

19 Third, in the execution of that scheme, the defendant
20 used or caused the use of interstate wire communications in
21 furtherance of the scheme to defraud.

22 The government would have to prove all of those
23 elements beyond a reasonable doubt.

24 The government would also have to prove that venue in
25 the Southern District of New York, which includes Manhattan and

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1 the Bronx, is appropriate by a preponderance of the evidence.

2 THE COURT: Okay. Thank you, Mr. Capone.

3 Mr. Rechnitz, you heard what Mr. Capone just said. Do
4 you have any questions about those elements?

5 THE DEFENDANT: I do not.

6 THE COURT: You have discussed those elements with
7 your attorneys prior to today?

8 THE DEFENDANT: Yes.

9 THE COURT: So I won't restate them.

10 Basically conspiracy is really two elements. The
11 consist of the conspiracy has to be proven, the purpose of
12 which was to violate the law, in this case the wire fraud
13 statute, and that portion of the wire fraud statute that
14 relates to honest services; and, second, that you knowingly
15 joined that conspiracy, that agreement, understanding the
16 illegal purpose of the conspiracy. That's really what it is
17 about. The rest of what Mr. Capone said was sort of fleshing
18 out what the underlying object of the conspiracy was. So those
19 are the elements of the conspiracy.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: And the last piece that he talked about
23 was what he referred to as the venue requirement. I think you
24 probably understand that; but, just in case you don't, in order
25 to be found guilty here in this district, this is the Southern

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1 District of New York, which is one of about 95 districts all
2 over the country, one of four districts in New York, in order
3 to be found guilty here, some portion of the crime has to have
4 taken place here. If it all took place in Queens, then you
5 couldn't be found guilty here. So the venue requirement just
6 requires that there is some connection in this district to what
7 happened, what the crime was. But to prove venue, the
8 government doesn't have to prove that beyond a reasonable
9 doubt. They have to simply prove that by a preponderance of
10 the evidence, which means the greater weight of the evidence,
11 so it is a much lesser standard. But that's only with respect
12 to venue. Everything else, all of the other elements would
13 have to be proven beyond a reasonable doubt.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Let me tell you briefly the penalties that
17 you face for this crime. This crime carries the maximum term
18 of imprisonment of 30 years. It also carries --

19 MR. CAPONE: It's 20 years, your Honor. It would be
20 30 years if it were a bank fraud, but I think it is 20 years
21 for --

22 THE COURT: Oh, I'm sorry. Let me look this up.
23 Well, I will presume it is 20. I have no reason to doubt
24 Mr. Capone, but I must have been bleary eyed when I did this
25 over the weekend.

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1 So a maximum sentence of 20 years, a maximum term of
2 supervised release of three years, and that means that, after
3 you serve whatever sentence in jail, you could still be
4 sentenced to serve three more years on supervised release,
5 which means you would be home, living in a community, but you
6 would have certain obligations that you would have to follow as
7 part of your supervised release. And if you violated any of
8 those terms and conditions, well, then you could be resentenced
9 and returned to jail for up to three years.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: In addition, I could also impose a fine of
13 \$250,000 or twice the gross gain that was derived from this
14 crime or twice the gross loss to persons other than yourself
15 that resulted from the crime. So whichever of those three is
16 the greatest, that is the maximum fine that you have would
17 face.

18 In addition to a fine, I could also order you to pay
19 restitution to any victims of the crimes. So to the extent
20 there were any victims who were harmed -- it could be
21 individuals or it could be entities -- I could order you to pay
22 money so that those folks are made whole. I could also order
23 you to forfeit any of the profits or proceeds derived from the
24 crime. So whatever monies were derived from the crime,
25 whatever property was used to further the crime, I could order

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1 you to forfeit as part of your sentence, and that would be
2 separate from any fine and separate from any restitution.

3 And then, finally, there is a \$100 special assessment,
4 and that's mandatory. That has to be paid, and that's also on
5 top of any fine, forfeiture, or restitution.

6 Do you understand those are the maximum penalties?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: Are you a United States citizen?

9 THE DEFENDANT: Yes, I am.

10 THE COURT: You should understand that as a result of
11 your guilty plea, you could lose certain valuable civil rights,
12 including your right to vote, your right to serve on a jury,
13 your right to hold public office, and your right to possess a
14 firearm.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: I mentioned supervised release. I told
18 you what that was, but I just want to make sure that it is very
19 clear that, in imposing sentence, I could impose a term of
20 supervised release that would follow any term of incarceration.
21 You will have surely terms and conditions associated with it.
22 Among those will almost certainly be that you not commit any
23 further crimes, that you not use a firearm, that you not use or
24 possess drugs. And the way it works is if at any point during
25 the course of your supervised release you were to violate the

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1 terms and conditions of supervised release, well, then I could
2 revoke your supervised release and I could send you back to
3 jail for the full three years. Even if you had already served
4 two years and 11 months on supervised release, if you are
5 almost done and perfect up until then, I could still impose a
6 sentence of three years for any violation and you wouldn't get
7 credit for the time you had already spent on supervised
8 release.

9 Do you understand that?

10 THE DEFENDANT: I do.

11 THE COURT: Are you serving any other sentence of any
12 kind at this point --

13 THE DEFENDANT: No.

14 THE COURT: -- state or federal? All right.

15 I should tell you there is no parole in the federal
16 system, so whatever term of incarceration I impose, you will
17 serve that term of incarceration. In New York State and some
18 other states, there is such a thing as parole; and the way that
19 works is that a judge may impose a sentence on the day of
20 sentencing of five years or ten years or ten to 20 years, and
21 then later, while a defendant is serving the sentence, a parole
22 board might step in and say, no, this person can come home
23 earlier. They seem like they get it. They are ready to
24 return. That's not part of the federal system. So whatever
25 sentence I impose, that is the sentence that you will serve.

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1 Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Let me tell you a little bit more about
4 sentencing. As I said, I am not going to impose a sentence
5 today, but the sentence you receive ultimately will be up to me
6 or to the sentencing judge if it is not me, and no one else.

7 Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: So no matter what anybody else has told
10 you, whether it is the government or your lawyers or anyone
11 else, that's not binding on the court.

12 Do you understand?

13 THE DEFENDANT: Yes.

14 THE COURT: The sentencing judge will determine what
15 is the appropriate sentence, and that determination will be
16 based on a number of different factors, and I want to just go
17 over with you what those factors are, because there are half a
18 dozen of them, all of which have to be balanced and carefully
19 weighed at the time of sentencing. One of those factors
20 relates to your own personal history, facts and circumstances
21 of your life. So the sentence has to be tailored to you as an
22 individual. You are unique. So the judge will obviously look
23 at your personal history, from your birth right up until now,
24 your work history, your family circumstances, your educational
25 background, your prior criminal history or lack of criminal

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1 history, you know, all the things that make you who you are.
2 Those are all relevant to sentencing, and the judge will
3 consider that in tailoring the sentence to you as a person.

4 Another factor that the judge has to consider are the
5 facts and circumstances of the crime here. Obviously this is a
6 serious crime. It is a felony. But what matters is not simply
7 what the crime is called as much as what the crime entailed.
8 So the judge is going to look at the circumstances and details
9 of the crime. What went on here? For how long a period of
10 time? What was your role relative to other people's roles?
11 What benefit did you receive? What harm was caused? All of
12 that is obviously important to determine what's the appropriate
13 sentence. And just as the sentence has to be tailored to you
14 as an individual, so, too, does it have to be tailored to the
15 specific crime that was committed and the harms associated with
16 it. It's important that the punishment fits the crime and that
17 the sentence imposed reflects the seriousness of the crime. So
18 that's another factor that the court will consider and weigh.

19 A third factor that the court will consider, which is
20 a little different than the first two that I mentioned, is the
21 need to deter or discourage future criminal conduct. So the
22 hope there is that by imposing a sentence in this particular
23 case, the judge will send a message to you so that you will
24 understand, hey, I can't do this. This is something that's not
25 acceptable, it won't be tolerated, and it is going to lead to

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1 just more painful outcomes. And the hope is that other people
2 who might be paying attention will also get the same message
3 without personally experiencing it. They will see what
4 happened to you and they will say, wow, this is no fooling
5 around. This is pretty serious, I was thinking of doing a
6 scheme like that, but it is just not worth it. The up side is
7 far outweighed by the consequences of being prosecuted and
8 convicted and sentenced.

9 I don't have a crystal ball. I can't predict what
10 effect my sentence will have on future conduct, but the
11 Congress has said this is something that courts have to
12 consider. Most of us recognize that there is something to
13 this, the notion that there is a connection between punishment
14 and future behavior. So that's something that the judge
15 obviously will take into account.

16 Another factor that the judge will have to consider
17 involves your needs while you are in custody. So if the judge
18 determines that an incarceratory sentence is appropriate, the
19 judge will also have to consider whether you have particular
20 needs that have to be addressed. So, you seem like a young guy
21 and a pretty healthy guy, but there are some defendants who
22 have serious physical health needs or mental health treatment
23 needs; some have substance abuse treatment needs; some,
24 frankly, have the need for more job training or educational
25 opportunities. But whatever the needs of an individual

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1 defendant are, the goal is to make sure that the sentence
2 imposed allows them to have those needs addressed. So I'm not
3 sure what needs, if any, you have that would have to be
4 addressed while in prison, but to the extent it is determined
5 that an incarceratory sentence is appropriate, then a
6 consideration of your needs is another factor that a court
7 would have to consider.

8 Another factor that the court has to consider is
9 something called the United States Sentencing Guidelines. Are
10 you familiar with the sentencing guidelines?

11 THE DEFENDANT: Yes.

12 THE COURT: I'm sure you have discussed those with
13 your attorney or attorneys.

14 THE DEFENDANT: Yes.

15 THE COURT: The sentencing guidelines, at the risk of
16 telling you what you already know, I am holding up this new
17 version, which is Howard Johnson blue -- maybe you don't know
18 what Howard Johnson is, but it is a garish blue cover. There
19 is a new edition every year, and they change the color of the
20 book every year. This came out in November. But the way it
21 works is that this book, which is about 5 or 600 pages long, is
22 prepared by a commission. It is called the United States
23 Sentencing Commission. That commission consists of some judges
24 and some lawyers and some law professors, experts in the field
25 of criminal law, and their job is to give guidance to judges

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1 like me to impose sentence on individuals.

2 So the way it works is that every crime, or type of
3 crime, is covered by a chapter in this book. And the
4 sentencing judge is directed to go to the chapter that relates
5 to the crime involved in the case, and then the judge is
6 prompted to make certain findings of fact. So in a case
7 involving fraud typically, one of the first inquiries is what
8 was the amount of the loss, if you could put a dollar value on
9 it. And there are other factors. And depending on the answer
10 to that question, the judge assigns points.

11 There are other things that the judge will consider,
12 including the role that the defendant played in the offense, if
13 they were a leader or an organizer of activity that was very
14 extensive, they might get more points. If they were a minor
15 participant, then the judge might subtract some points. If the
16 person, as you have, has offered to plead guilty and has
17 accepted responsibility to the crime and saves the court and
18 the government the time and resources necessary to try the
19 case, well, then they would be entitled to a reduction under
20 the book.

21 So there is a variety of questions that the judge
22 considers and answers and then assigns points. And after
23 adding and subtracting points, the judge comes up with a number
24 that is referred to as the offense level.

25 The judge then goes to another part of this book that

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1 relates to criminal history and, not surprisingly, a person who
2 has been convicted before of crimes and who has gone to jail
3 for those crimes, that person is going to be treated more
4 harshly than a person who has no prior involvement with the law
5 enforcement system, the criminal justice system. So the judge
6 will go to the chapter with the criminal history and will
7 determine whether there have been any prior convictions for the
8 defendant. If so, the judge will consider when they were and
9 how long the sentence was; and, depending upon the answers to
10 those questions, the judge will assign points and then come up
11 with another number. That number is referred to as the
12 criminal history category. There are six criminal history
13 categories. Category I is the lowest and least serious.
14 Category VI is the highest and most serious.

15 Then, with those two numbers that I have just
16 mentioned -- the offense level on the one hand and the criminal
17 history on the other -- the judge goes to the back of this
18 book, where there is a chart or a table. I don't know how good
19 your eyes are. You probably can't see it from here, but I am
20 willing to bet a dollar that your lawyers have gone over this
21 with you. But there is a chart or grid that's on the back
22 cover. The first column here on the far left is the offense
23 level column. It's numbered 1 through 43. And the judge keeps
24 going down that column until he gets to the offense level that
25 he or she found to be appropriate.

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1 The judge then goes across these other columns, from
2 left to right, each of which represents a criminal history
3 category. So the judge keeps going until he or she gets to the
4 criminal history category that the judge found to be
5 appropriate. And where the judge's finger finally stops on
6 this chart, well, that is the range that, in the view of the
7 commission, would be appropriate, and it is set forth in terms
8 of months, okay?

9 So do you have any questions about this book?

10 THE DEFENDANT: No.

11 THE COURT: I should point out this book is advisory.
12 It is not mandatory. I don't have to follow this book. I am
13 free to sentence above or below the range in this book. But I
14 do have to consider this book and I do have to make my findings
15 under it. I have to announce what I found the offense level to
16 be, what I found the criminal history category to be, and what
17 the range is. But then I am free to sentence above or below.

18 And then, finally, the last factor that the judge is
19 asked to consider and balance along with all of those others I
20 mentioned is what's sometimes referred to as the need to avoid
21 unwarranted sentencing disparities between similarly situated
22 people, which is a mouthful. What it means basically is this:
23 Before imposing a sentence in a particular case, the judge is
24 asked to take a step back and make sure that the sentence in
25 that particular case is roughly consistent with other cases all

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1 over the country that involve similar defendants and similar
2 crimes. Recognizing no two people are exactly alike, no two
3 cases are exactly alike, but where there really are strong
4 similarities, it is important that the sentences be similar.
5 Because if they were all over the place, then it would seem
6 arbitrary and it would probably undermine people's respect for
7 the law, and one of the objectives of this entire sentencing
8 approach is to promote respect for the law. So that's the last
9 factor that the judge will consider. Is there rough
10 consistency with the sentence contemplated here as compared to
11 other sentences in similar cases?

12 So sentencing is more art than science, I will say
13 that. It is not something that you can plug into a computer.
14 This book sort of runs more like a computer, probably more like
15 an abacus, probably, but the actual sentencing process is a
16 little more nuanced and, frankly, tricky because it requires
17 balancing all of these different factors, some of which may
18 argue in favor of a lenient sentence, some more in favor of a
19 more harsh sentence.

20 So that is the process. Do you have any questions
21 about that process?

22 THE DEFENDANT: I do not.

23 THE COURT: You should understand that if the sentence
24 you receive at the end of this whole thing is higher than what
25 you had hoped for, it is higher than what you expected, you

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1 won't have the right to withdraw your guilty plea at that
2 point. Do you understand that?

3 THE DEFENDANT: Yes, I understand.

4 THE COURT: I said we haven't yet crossed the point of
5 no return, but we are pretty darn close. Once you have pled
6 guilty here today, if you basically wait around until
7 sentencing and then say, wow, that judge was a nut, he
8 sentenced me to something I never imagined, that's crazy, I
9 want my plea back, I want to back to June 6 and start over,
10 that train will have left the station a long time. You won't
11 be able to do that.

12 Do you understand?

13 THE DEFENDANT: I understand.

14 THE COURT: You might still have a right to appeal,
15 and you certainly would have the right to your opinion that the
16 sentence was too high, but you wouldn't have the right to
17 withdraw your guilty plea.

18 Understood?

19 THE DEFENDANT: I understand.

20 THE COURT: I understand that there is a plea
21 agreement between the parties. I think I got a draft version
22 of this.

23 Do you have the original there? Sometimes there are
24 multiple originals floating around.

25 MS. BIRGER: We have one original; Mr. Capone has

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1 several.

2 THE COURT: Mr. Capone, why don't you give one back.
3 I am going to have that one marked as a court exhibit. I know
4 Ms. Birger and Mr. Levine want to keep one for themselves. So
5 just give me one.

6 I am going to have the witness identify this as his
7 signature. I will then mark that as a court exhibit.

8 So the document that I saw is dated June 3. It is a
9 five-page, single-spaced letter from assistant United States
10 attorneys Bell, Capone, and Nawaday, and their chief, Daniel
11 Stein, and it is addressed to Mr. Levine and Ms. Birger.

12 Is that what you have in front of you there?

13 THE DEFENDANT: Yes.

14 THE COURT: Have you read that document before today?

15 THE DEFENDANT: Yes.

16 THE COURT: If you go to the last page, again, there
17 is a signature line. Is that your signature at the bottom?

18 THE DEFENDANT: Yes.

19 THE COURT: I guess second from the bottom.

20 And you signed that today?

21 THE DEFENDANT: Yes.

22 THE COURT: But before you signed it, you read the
23 document and discussed it with your attorneys?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you have any questions about what's in

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1 this document?

2 THE DEFENDANT: I do not.

3 THE COURT: Mr. Levine and Ms. Birger, that's your
4 signature as well?

5 MS. BIRGER: Yes, your Honor.

6 MR. LEVINE: Yes, your Honor.

7 THE COURT: I presume that you read and reviewed with
8 your client this agreement and you were able to answer any
9 questions that you had before he signed it?

10 MS. BIRGER: We did, your Honor.

11 THE COURT: If you could hand that one back up, I will
12 mark that as a court exhibit. I will mark it as Court Exhibit
13 B. I will date and initial it. I usually give this one back
14 to the government, but it is a court exhibit and if there is
15 ever any question as to what agreement we were talking about,
16 it's the one that's got my initials on it. Okay?

17 I am not going to go over this in tremendous detail,
18 Mr. Rechnitz, but there are a couple of features of this
19 agreement I want to make sure you understand.

20 First, this is an agreement between you and the
21 government. Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: You have certain obligations under this
24 agreement and so does the government. Do you understand that?

25 THE DEFENDANT: Yes.

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1 THE COURT: But I don't have any obligations under
2 this agreement. I didn't sign it, I didn't negotiate it, and I
3 am not bound by it.

4 Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: So it is at least conceivable that there
7 will be things in this letter agreement that you all agree on,
8 you stipulate to, but which I find are not right, not accurate,
9 or I disagree.

10 Do you understand that?

11 THE DEFENDANT: Yes.

12 THE COURT: If that's the case, I have to follow my
13 own judgment. I don't just go along because the parties
14 agreed.

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: An important feature of this agreement is
18 that it is a cooperation agreement. It provides that you will
19 provide truthful information to the government, you will meet
20 with them when requested, that you will testify truthfully as
21 requested, and that you will provide any other information or
22 evidence that they ask for.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: You also agree under this letter agreement

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1 that you will not commit any further crimes. You agree to some
2 other things as well.

3 If you do all of those things, the government agrees
4 that if your cooperation is substantial and it leads to
5 significant assistance in the investigation and prosecution of
6 other people, well, then, they agree that they will make a
7 motion at the time of sentencing under section 5K1.1 of the
8 sentencing guidelines, and that will allow me to sentence you
9 below the guidelines and sort of I would be authorized to give
10 you credit for your cooperation. I am allowed to go below the
11 guidelines anyway because they are no longer mandatory, but
12 this 5K letter will allow me to sentence even lower than that,
13 than I might otherwise be inclined to do in light of your
14 cooperation.

15 Do you understand that?

16 THE DEFENDANT: I do.

17 THE COURT: It is always the government's call as to
18 whether your cooperation was substantial. That will be up to
19 them. If they decide close, but no cigar, I'm not in a
20 position to second guess them.

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: If they act in bad faith, then I might.
24 But if it is just that everybody agrees you tried your best, it
25 just wasn't enough, then that will be a basis not to write you

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1 a 5K and that would not be a basis on which I could sentence
2 you below the guidelines.

3 Do you understand that?

4 THE DEFENDANT: Yes.

5 THE COURT: I might consider other arguments, but
6 that's one that wouldn't be available to me.

7 Do you have any questions about any of that?

8 THE DEFENDANT: I do not.

9 THE COURT: This agreement that you have signed that I
10 have marked as Court Exhibit B, does this constitute the entire
11 agreement that you have with the government?

12 THE DEFENDANT: Yes.

13 THE COURT: Are there any other agreements beside this
14 one that exist between you and the government?

15 THE DEFENDANT: No.

16 THE COURT: Has anything been left out of this
17 agreement?

18 THE DEFENDANT: No.

19 THE COURT: Has anybody offered you anything of value
20 or threatened you in any way in exchange for pleading guilty
21 here today or signing this agreement?

22 THE DEFENDANT: No.

23 THE COURT: Ms. Birger, are you aware of any defense
24 that would prevail as a matter of law or any other reason why I
25 should not accept a guilty plea from Mr. Rechnitz today?

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1 MS. BIRGER: No, your Honor.

2 THE COURT: Mr. Capone, is there anything else you
3 would like me to ask about this agreement?

4 MR. CAPONE: No, your Honor. Thank you.

5 THE COURT: At this point, then, Mr. Rechnitz, I am
6 going to ask you to tell me in your own words what it is you
7 did that makes you guilty of this crime, the crime charged in
8 the information.

9 THE DEFENDANT: First of all, thank you for explaining
10 everything so clearly to me, your Honor.

11 THE COURT: Sometimes I wonder if it helps or if
12 everyone is, like, let's get on with the show.

13 THE DEFENDANT: It helps. It definitely helps.

14 THE COURT: This is probably the only time you have
15 done this, right?

16 THE DEFENDANT: Yes.

17 THE COURT: The lawyers and I do this for a living,
18 but you are the focus, so I want to make sure you understand
19 everything.

20 THE DEFENDANT: Okay. Thank you.

21 Several years ago, I became friendly with an
22 individual who knew a lot of New York police officers. Over
23 time, through that individual, I got to know a number of police
24 officers and a senior official at the Correction Officers'
25 Benevolent Association. I bestowed gifts on many of these

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1 police officers and the COBA official, including paying for
2 expensive meals and trips.

3 I also agreed with that same friend to make
4 contributions and to arrange for contributions by others to
5 political campaigns.

6 I expected, based on an implicit understanding, that
7 if I requested a favor or assistance from any of those officers
8 or beneficiaries of my political contributions, that I would
9 receive favorable treatment for myself and others, including
10 actions, such as parking placards, police escorts, assistance
11 in obtaining a gun license, and police assistance in resolving
12 private disputes, as a result of my gifts and contributions. I
13 also understood that my friend, who had introduced me to many
14 of the individuals, was requesting and receiving certain
15 benefits from the officers and political officials in exchange
16 for the personal and financial benefits that I was providing.
17 With respect to political contributions, I expected for my
18 conversations with the fundraiser that I would receive
19 favorable municipal treatment. [REDACTED]

20 [REDACTED]
21 [REDACTED]
22 [REDACTED]

23 In addition, in approximately late 2013 and early
24 2014, I introduced an official of a hedge fund to the COBA
25 official. The COBA official arranged for COBA to invest union

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1 funds in the hedge fund in exchange for a payment to be made by
2 the hedge fund official to that senior COBA official. I knew
3 about their agreement for the side payment and I knew that the
4 side payment was not disclosed to others at COBA. I
5 subsequently facilitated the payment to the senior official at
6 COBA on behalf of the hedge fund official by personally
7 delivering a cash payment to the COBA official in Manhattan. I
8 was reimbursed by the hedge fund official.

9 In furtherance of these actions and agreements with
10 others, I sent and received numerous e-mails and telephone
11 calls.

12 THE COURT: Okay. You were reading a statement,
13 correct?

14 THE DEFENDANT: Yes.

15 THE COURT: Nothing unusual about that. That's okay.
16 And I assume your lawyers assisted you in preparing that
17 statement, which there is nothing wrong with that either. But
18 I want to make sure that this is your statement. And so did
19 you prepare this statement with assistance?

20 THE DEFENDANT: I did.

21 THE COURT: But it's your statement?

22 THE DEFENDANT: I did. It is my statement.

23 THE COURT: And you adopt it as your own? In other
24 words, you are just not reading something that somebody sort of
25 stuck under your nose, correct?

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1 THE DEFENDANT: Correct. It is my statement, my
2 words.

3 THE COURT: Everything you have said in that statement
4 is the truth, correct?

5 THE DEFENDANT: Yes.

6 THE COURT: Where did all of this take place? In
7 Manhattan or other parts of the city?

8 THE DEFENDANT: Manhattan and elsewhere.

9 THE COURT: Manhattan and elsewhere. All right. And
10 over what period of time did this go on?

11 THE DEFENDANT: It started in 2011 until 2015, in or
12 about.

13 THE COURT: Mr. Capone, is that a satisfactory
14 allocution to your mind?

15 MR. CAPONE: Yes, your Honor.

16 THE COURT: And, Ms. Birger, do you agree?

17 MS. BIRGER: Yes, your Honor.

18 THE COURT: Okay. I think so, too.

19 Look, the purpose of the allocution is to make sure
20 that there is a basis from which to find each of the elements
21 have been established, and I think what you just read does
22 that. So at the time of sentencing there might be a lot more
23 flesh put on those bones and a lot more information available
24 to the sentencing judge, but for today's purposes, I think
25 that's sufficient. So I will accept your guilty plea on that

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1 count.

2 Before I do that, though, I will give the government
3 an opportunity to summarize the evidence the government would
4 introduce or offer if the case went to trial. Listen to
5 Mr. Capone as he summarizes this evidence. When he is
6 finished, if you disagree with anything he has said or if you
7 would like to qualify anything he has said, I will give you a
8 chance to do that or I will give you a chance to talk to your
9 lawyers and they can voice their objections if they would like,
10 okay?

11 THE DEFENDANT: Okay.

12 THE COURT: Mr. Capone.

13 MR. CAPONE: Thank you, your Honor.

14 If the case were to go to trial, the government would
15 principally introduce evidence obtained from wiretaps on
16 telephones used by the defendant, by the defendant's friend
17 that he referred to, as well as on another individual; numerous
18 e-mail records of the defendant, the defendant's friend, and
19 others involved in the offense; records from the New York City
20 Police Department, from the Correction Officers' Benevolent
21 Association, and from the hedge fund that was referred to; as
22 well as the testimony of numerous law enforcement witnesses and
23 police witnesses.

24 The evidence would also establish, as to the e-mails
25 that the defendant referred to, based on the existence of

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1 servers, that those e-mails crossed state lines in furtherance
2 of the scheme to defraud.

3 THE COURT: Thank you, Mr. Capone.

4 (Defendant and defense counsel confer)

5 THE COURT: Do you need a minute?

6 THE DEFENDANT: I'm okay.

7 THE COURT: You are sure?

8 THE DEFENDANT: Yes.

9 THE COURT: You heard what Mr. Capone said. Do you
10 disagree with anything he has said?

11 THE DEFENDANT: No, I do not.

12 THE COURT: Let me now ask you to stand, Mr. Rechnitz.

13 Mr. Rechnitz, how do you now plead to Count One of the
14 information? Guilty or not guilty.

15 THE DEFENDANT: Guilty, your Honor.

16 THE COURT: Did you do the things you are charged with
17 doing in this information?

18 THE DEFENDANT: Yes, I did.

19 THE COURT: Are you pleading guilty because you are
20 guilty?

21 THE DEFENDANT: Yes.

22 THE COURT: Are you pleading guilty voluntarily and of
23 your own free will?

24 THE DEFENDANT: Yes.

25 THE COURT: Mr. Rechnitz, because you acknowledge that

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1 you are guilty as charged in the information, because you know
2 your rights and you have waived those rights, because your plea
3 is entered knowingly and voluntarily and is supported by an
4 independent basis in fact for each of the elements that we
5 discussed earlier, I accept your guilty plea and I adjudge you
6 guilty on Count One of the information.

7 Okay. So have a seat.

8 There are a couple of things we need to talk about
9 now, one of which is bail, the other of which I guess is a
10 sentencing date. Let's talk about the sentencing date first,
11 even though the pretrial officer has been waiting a long time.

12 It seems to me we are probably going to be setting a
13 control date for sentencing, is that right?

14 MR. CAPONE: Yes, your Honor.

15 THE COURT: Let me ask the government to submit to me
16 a status letter in 60 days, cc'ing defense counsel, apprising
17 the court as to the state of the cooperation and whether, in
18 the government's view, we are in a position to schedule a
19 sentencing date, okay? I am going to ask you to do this every
20 60 days. Okay?

21 MR. CAPONE: No problem, your Honor.

22 THE COURT: Unless you think we are talking about such
23 a long period of time that we should do 90 days.

24 MR. CAPONE: I think we are probably talking about
25 several months, so 90 days would --

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1 THE COURT: Let's say 90 days then. 90 days, the
2 first of which puts us at September, is that right?

3 (Pause)

4 THE COURT: September 6 status letter from the
5 government cc'ing counsel as to the status of defendant's
6 cooperation and whether we can schedule a sentencing date in
7 the government's view. All right. That can be submitted under
8 seal.

9 I have already found that this proceeding and all of
10 the files associated with it are properly sealed in light of
11 the government's ongoing investigation. It seems to me the
12 presumption of open records which normally applies has been
13 rebutted and overcome, but I will ask the government to address
14 the need for sealing or continued sealing in its status letters
15 beginning in September, okay? So address that. *U.S. v. Amadeo*
16 is kind of the touchstone, so address that if you are going to
17 ask for more time.

18 MR. CAPONE: Your Honor, the order previously entered
19 says to update you in 30 days on that. Do you want us to just
20 wait until --

21 THE COURT: I think 90 days. If circumstances change
22 that it is clear we no longer need to do this, then let me know
23 right away, but let's amend that to make it 90 days, a status
24 letter in 90 days about cooperation and sentencing and the need
25 for continued sealing. I think let's just get this all on one

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1 track, okay?

2 MR. CAPONE: Thank you, your Honor.

3 THE COURT: All right.

4 So let me tell you this. One other thing about
5 sentencing, Mr. Rechnitz. What I would normally be doing now,
6 if you weren't cooperating, if it wasn't such a long-term
7 thing, I would be setting a sentencing date, which probably
8 would be three or four months out from today. That would allow
9 the probation department to prepare a report which is called a
10 presentence report. That report is lengthy, maybe 30, 40,
11 single-spaced pages. It provides a lot more information than
12 what we have covered today, a lot more information about you as
13 a person and a lot more information about the crime that's been
14 discussed very broadly today. All of that is obviously
15 relevant to what would be an appropriate sentence, so I will
16 rely upon that report quite a bit.

17 The way the probation department collects that
18 information and prepares that report is by interviewing people.
19 So they will interview the agents who worked on the case. They
20 will interview people who know you, including family members
21 and friends and employers and coworkers and things like that.
22 They will review public documents as well. That's how all of
23 this gets put together. Probation will also come and interview
24 you.

25 I am not going to order that interview, I am not going

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1 to order the report even be prepared until I have set a
2 sentencing date. But once I have set a sentencing date, then
3 probation will start collecting information and arranging to
4 schedule interviews. Yours will be among them.

5 Ms. Birger, Mr. Levine, I assume you want to be
6 present for any interviews?

7 MS. BIRGER: Yes, your Honor.

8 THE COURT: I will order no interview should take
9 place unless counsel is present. But once that interview goes
10 forward, Mr. Rechnitz, I will expect you will be truthful and
11 accurate in all your answers to the probation officer. The
12 probation officer, like the pretrial services officer, they
13 work for the court. They are sitting today at the front table,
14 but they don't work for the government. They work for the
15 court. So treat them with the same respect that you treat me
16 with, and obviously be truthful and complete in all your
17 answers to pretrial and to probation, okay?

18 THE DEFENDANT: Okay.

19 THE COURT: Once that report is prepared, you will get
20 a copy. You should read it carefully. You should discuss it
21 with your attorneys. If there is anything in that report that
22 you think is wrong, tell your lawyers. They will then reach
23 out to the probation officer to say, hey, we disagree with
24 this, and this, and that. The government will have the same
25 opportunity.

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1 The probation department will then issue a final
2 report, and that's the first one I will see. You will get a
3 copy of that one as well. You should read that one again
4 carefully, cover to cover. Don't assume that it is unchanged
5 from the last one, the first draft. Don't assume that the
6 objections that you had previously have been corrected. Don't
7 assume anything. Read it carefully. If there is anything you
8 disagree with, tell your lawyers.

9 At that point, after the final, they will then make
10 objections to me. If there are objections, I will resolve the
11 objections. I will either have a mini trial perhaps with
12 witnesses or perhaps reviewing exhibits and documents or
13 perhaps we will just have argument with the lawyers to talk
14 about what the facts are and what inferences should be drawn
15 from the facts that are undisputed. But either way I will
16 resolve that.

17 In addition to that presentence report, I will review
18 any other submissions that are made by the parties. I expect
19 your lawyers will make a sentencing submission on your behalf,
20 which I obviously will read. It will be their opportunity to
21 make arguments about what they think will be an appropriate
22 sentence in light of those different factors that I talked
23 about before. The government will have the same opportunity.

24 In addition, if you or any of your friends or family
25 members would like to write to me before sentencing, that's

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1 perfectly fine. I am happy to read those letters. They can be
2 really helpful. I don't know you well. I don't know
3 defendants typically that well. A lot of people know them
4 better than I do. So letters from a defendant or letters from
5 a defendant's family or friends or coworkers can be very
6 valuable insights into the character of a person. The
7 probation report will touch on some of that because probation
8 does a very thorough job and they will talk to a lot of people
9 and they will summarize what those other folks said, but if you
10 or anybody else would like to write me, that's perfectly fine.
11 I promise I will read that stuff.

12 The only thing I will ask is that you have all of
13 those letters go to your lawyers. Your lawyers will collect
14 them all, attach them to their submission, and send them to me.
15 That way I will be confident nothing has slipped through the
16 cracks. If everyone is sending me letters, there are more
17 opportunities for things to get lost in transit. Okay?

18 THE DEFENDANT: Okay.

19 THE COURT: On the day of sentencing, whenever that
20 is, we will come back in here. At that point I will review
21 with you everything that I have received and reviewed so that
22 you can say, hey, you forgot a letter or you forgot something;
23 and then I will have a chance to say, oh, no, I have it, you
24 are right, I just neglected to mention it, or whatever it is.

25 I will then resolve any objections if there are any to

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1 the presentence report. I will then make my findings under the
2 guidelines. I will then hear from the attorneys. I will give
3 them a chance to discuss the other factors and the key facts
4 and arguments that they think appropriate.

5 Once they finish, I may ask them a few questions or
6 two, and then after all of that, I will give you an opportunity
7 to speak if you would like. You are not required to speak, but
8 you would have a right to speak and you would be very welcome
9 to, so I will give you that chance.

10 Then after all of that, then I will tell you the
11 sentence that I intend to impose, I will explain my reasons for
12 it, I will check with the lawyers to make sure I haven't done
13 something illegal or improper and, assuming not, then I will
14 formally impose sentence at that point.

15 That's the process. It takes a little bit of time and
16 it sounds like we have got a lot of other things going on in
17 between, so it might be a while before you come forward for
18 sentencing, but that's the basic sequence of events, okay?

19 Any questions about any of that?

20 THE DEFENDANT: No.

21 THE COURT: Let's talk about bail. I have received,
22 prior to today's conference, a report from the Pretrial
23 Services officer. Let me just get it in front of me. It is a
24 five-page, single-spaced report from Ms. Rosado, who is here
25 today. The recommendation is that I grant bail, basically

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1 release on a bond with some cosigners and some property and
2 surrender of travel documents. That's the just of it?

3 MS. ROSADO: Yes, it is.

4 THE COURT: Counsel, have you seen a copy of the
5 Pretrial Services report?

6 MR. CAPONE: Yes, your Honor.

7 THE COURT: Is there any objection to it?

8 MR. CAPONE: In terms of?

9 THE COURT: Anything in it, any of the facts or any of
10 the recommendations?

11 MR. CAPONE: Not to the facts. The parties had
12 discussed a package that is slightly different from what's
13 proposed.

14 THE COURT: Let's hear it.

15 MR. CAPONE: The differences would be -- well, we
16 agreed to a \$500,000 bond that would be fully secured by cash
17 or property.

18 THE COURT: By when?

19 MR. CAPONE: Within, I think, two weeks?

20 MS. BIRGER: Two weeks.

21 MR. CAPONE: Two weeks, your Honor, to be signed by
22 the defendant. The pretrial report does recommend one
23 cosigner.

24 The only other difference is that we had agreed to
25 travel within the United States. The pretrial report limits it

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1 to the Southern and Eastern Districts of New York and
2 California, as well as points in between for travel.

3 THE COURT: So the government has no objection to
4 basically travel throughout the United States?

5 MR. CAPONE: That is right, your Honor.

6 THE COURT: Without approval or prior permission from
7 pretrial?

8 MR. CAPONE: Yes, your Honor, and I think -- yes.

9 Ms. Birger can probably address this, but I think Mr. Rechnitz
10 does travel frequently for work, and there could be many, many
11 requests if we went that route.

12 THE COURT: Surrender of travel documents?

13 MR. CAPONE: Yes, your Honor.

14 THE COURT: And no applications for new documents.

15 Okay.

16 Ms. Rosado, are you okay with that change?

17 MS. ROSADO: Yes, your Honor.

18 THE COURT: There was some discussion about firearms
19 and firearms licenses. Do I need to make that a condition of
20 bail?

21 MR. CAPONE: As far as I know he does not have
22 presently a license for any firearms. So it is fine. It
23 probably makes sense to include not obtaining any firearms.

24 THE COURT: Okay, so no firearms, okay? Mr. Rechnitz,
25 you are not looking to get any firearms between now and

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1 sentencing, are you?

2 THE DEFENDANT: No.

3 THE COURT: Good.

4 Ms. Birger, that's acceptable to you?

5 MS. BIRGER: Your Honor, I couldn't quite hear what
6 Mr. Capone said. The pretrial report recommended one cosigner,
7 and the parties' package does not have any cosigners. I wanted
8 to make sure that that was clear. I thought perhaps it wasn't.

9 THE COURT: No, it wasn't clear to me. So you are
10 saying a financially responsible person as a cosigner or no
11 cosigners?

12 MR. CAPONE: No cosigners, just the defendant, as well
13 as the fully secured bond.

14 THE COURT: If it is fully secured, then there is less
15 need for a cosigner, other than for moral suasion purposes.

16 MR. CAPONE: Exactly, your Honor, and I think both
17 parties agree that that is not necessary here.

18 THE COURT: Okay. And, Ms. Rosado, are you okay with
19 that?

20 MS. ROSADO: Yes, your Honor.

21 THE COURT: Given the circumstances, I don't think
22 that Mr. Rechnitz is a flight risk, I don't think he is a
23 danger, so I think bail on these conditions is appropriate. So
24 I am prepared to grant bail on those conditions.

25 MS. BIRGER: Two small things with respect to that,

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1 your Honor.

2 One is, we had discussed with the government, and I
3 believe there is no objection, given the need for sealing here
4 and some of the sensitivities, that any pretrial reporting be
5 by telephone, if that's acceptable to Pretrial Services.

6 THE COURT: Okay. Ms. Rosado, are you okay with that?

7 MS. ROSADO: Your Honor, we weren't asking for
8 supervision, so that's fine.

9 THE COURT: So not even telephone?

10 MS. BIRGER: Even better, your Honor.

11 THE COURT: Look. I assume Mr. Rechnitz is going to
12 be in touch with law enforcement agents and with the
13 government, so I assume that if he is not abiding by these
14 conditions, they are going to tell me about it. I have every
15 reason to think that he is going to comply with these
16 conditions, and so I think that's fine. So I won't even need
17 pretrial supervision. But I guess I will ask the government in
18 its periodic reports to just tell me how Mr. Rechnitz is doing
19 in terms of abiding by the conditions of bail, since you will
20 be in a better position than I to determine whether he is doing
21 just that. Okay?

22 MR. CAPONE: Yes, your Honor.

23 THE COURT: Let's have all those conditions met by the
24 20th of June, okay? So the bond will be signed when? Today or
25 by the 20th?

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1 MR. CAPONE: Today, your Honor, but if the court will
2 allow us to stay in the courtroom and have the folks from 500
3 Pearl bring the bond here for Mr. Rechnitz to sign, that would
4 be great, because having him hang out over there would defeat
5 the purpose.

6 THE COURT: Have you contacted them --

7 MR. CAPONE: Yes.

8 THE COURT: -- to know that's in the cards?

9 MR. CAPONE: Yes. I spoke to Danny Ortiz this
10 morning. I am happy to walk over the conditions, and they will
11 prepare the bond and bring it back over here.

12 THE COURT: All right. I guess we will have to
13 prepare an order that makes clear what the conditions are, so
14 we will pound that out. Maybe you can just tell him to come
15 over? He needs to type it out before he comes, is that the
16 plan?

17 MR. CAPONE: Yes, your Honor.

18 THE COURT: You can tell him, I guess, by the phone.
19 We will pound out an order that just reflects what we just
20 talked about. Okay?

21 Is there anything else we should cover today?

22 MS. BIRGER: One more thing your Honor, a travel
23 request already. Mr. Rechnitz is scheduled to go to a family
24 wedding in Toronto, Canada, in just a couple of weeks. He is
25 supposed to fly on June 20 and to return around June 22. I

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1 believe the government has no objection, but I wanted to make
2 the application that he be permitted that international travel
3 in two weeks.

4 THE COURT: Okay. So otherwise international travel
5 is not part of his bail conditions; but, with this exception, I
6 will allow it, and then future requests for international
7 travel would have to come to the court, right? That's the
8 plan?

9 MR. CAPONE: Yes, your Honor. And actually, now that
10 I am thinking of it, if there is no Pretrial Services
11 supervision, it might make sense, given that Mr. Rechnitz will
12 be in touch with agents, for the F.B.I. to maintain his
13 passport.

14 THE COURT: Okay. So I will ask Mr. Rechnitz to turn
15 over the passport to the agents, okay, the F.B.I. agents. I
16 will allow the trip to Canada. Any other foreign travel will
17 have to be approved in advance by me, so tell your lawyers if
18 you have got other trips that you really need to do, and then
19 they will tee it up for me and probably talk to the government
20 to see if they are on board or not. Okay?

21 THE DEFENDANT: Okay. Thank you.

22 MS. BIRGER: Thank you, your Honor.

23 THE COURT: Mr. Capone, anything else we should cover
24 today?

25 MR. CAPONE: No, your Honor. Thank you.

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1 THE COURT: All right.

2 So, Mr. Rechnitz, you know, I don't know when I will
3 see you again. Obviously take these conditions of bail very,
4 very seriously. If at any point between now and sentencing you
5 think you need to see me for whatever reason, tell your
6 lawyers, and we will set something up, okay? I don't want you
7 to think I have forgotten about you, but it's just that the
8 nature of your relationship going forward with the government
9 means that this could take a while. They really will be
10 maintaining a relationship with you, and I will be waiting for
11 them to tell me that we are ready to get back on track, okay?

12 THE DEFENDANT: Okay.

13 THE COURT: All right. Good luck to you.

14 THE DEFENDANT: Thank you.

15 THE COURT: Thanks.

16 Let me thank the court reporter, as always, for her
17 time and talents. I am going to order, if it's not already
18 clear, that this transcript remains sealed, available only to
19 counsel of record, and the entire docket is going to remain
20 sealed as well.

21 Okay. Thanks.

22 - - -

23

24

25